fendant, describing the portion so conveyed by metes and bounds. Complainants, who are also part owners of the land, bring this suit against defendant alone for partition of such particular part. *Held,* defendant is entitled to have the entire tract valued, and have set apart to it, in severalty, such portion as represents five-eighteenths in value of the whole, and if upon such valuation it shall appear that the twenty-seven acres are not of greater value than five-eighteenths of the entire tract the decree will direct the allotment thereof to the defendant, or if a part thereof is found to be of such value, such part should be allotted. *Highland Park Mfg. Co.* v. *Steele,* 235 Fed. 465.

As to the exact interest which is passed by such a deed, the courts are not agreed. They do agree, however, that the grantee has no absolute right on partition to have the described land allotted to him, and that the determination reached must leave the rights of other tenants unprejudiced. Beyond this there is conflict. It was early held that a conveyance of this sort was absolutely void. *Griswold* v. *Johnson,* 5 Conn. 363, but that decision was later modified by the same court when it concluded that the deed would be validated if the other co-tenants choose to affirm it. In some jurisdictions the effect of the grant is contingent upon the result of the partition suit. If by chance the portion conveyed happens to be set off as the share of the grantor it passes, otherwise the grantee takes nothing. *Cressey* v. *Cressy,* 215 Mass, 65, 102 N. E. 314; *Kenoye* v. *Brown,* 82 Miss. 607, 35 So. 163; *Benedict* v. *Torrent,* 83 Mich. 181, 47 N. W. 129. Another view is that the grantee takes the interest of the grantor, whatever that may be. *Lessee of White* v. *Sayre,* 2 Ohio 110. The decision in the principal case is more favorable to the grantee than any of these, since he acquires the interest of his grantor, and unless other equities interfere is, upon partition, allotted the land described in his deed. This determination may be open to the objection that the equity of the grantee, in the land described, is given more weight than would be accorded a desire on the part of the grantor to be allotted some particular portion. This might lead to colorable conveyances. Such a possibility would be obviated by permitting the deed to pass the interest of the grantor, but denying it any influence on the result of the partition. The instant case is supported by the following: *Harrell* v. *Mason,* 170 Ala. 282, 54 So. 104; *Worthington* v. *Staunton,* 16 W. Va. 209; *Young* v. *Edwards,* 33 S. C. 404, 11 S. E. 1066; *Maverick* v. *Barney,* 88 Tex. 560, 32 S. W. 512; *Moonshine Co.* v. *Dunman,* 51 Tex. Civ. App. 159, 111 S. W. 161.

TRIAL—SEPARATION OF JURY AFTER FINAL SUBMISSION OF CASE.—In a civil case the jury stated to the associate, after the judge had left the court one evening, that they had agreed to a verdict on two counts but could not agree on the third, and they then separated for the night. Coming before the judge the next morning they gave a verdict on all three counts. Judgment was entered on the verdict so rendered and accepted. *Held,* that the verdict was valid inasmuch as no prejudice was shown. *Fanshaw* v. *Knowles,* [1916] 2 K. B. 539.

The precise point raised in the principal case apparently had never been passed upon definitely by an English court prior to this time. The counsel for the appellant urged that the rule applicable to criminal trials should govern the decision of this, a civil case. To quote from a recent leading case that rule is as follows: "If a juror after the judge has summed up in any criminal trial separates from his colleagues, and not being under the control of the court, converses or is in a position to converse with other persons, it is an irregularity which in the opinion of the court renders the whole proceedings abortive, and the only course open to the court is to discharge the jury and commence the proceedings afresh." *Rex.* v. *Ketteridge,* [1915] 1 K. B. 467. The court deciding that case did not think it necessary to consider what had actually taken place, nor whether the irregularity had in fact prejudiced the prisoner. However, there was in that case no suggestion that this same rule would apply in the case of a civil trial. While, as stated above, this precise question was treated by the court as one of first impression, there is strong evidence that at an early date the strict rule applicable to criminal cases was relaxed under some circumstances insofar as civil trials were concerned. COKE, LITTLETON, *227*; 3 BLACKSTONE, COMM., 377; *Lord St. John* v. *Abbott,* Barnes 441, 94 Eng. Rep. 994. The principal case states definitely for the first time that "the rule is that when there has been a separation, that is a circumstance which with other circumstances ought to be taken into account and dealt with by the court." In the United States the general rule is that a separation in civil trials must be prejudicial to invalidate the verdict, even when the separation takes place before the jury have arrived at a verdict. *Spencer* v. *Johnson,* 185 Mich. 85, 151 N. W. 684; *Liverpool &c. Ins. Co.* v. *N. & M. Friedman Co.,* 133 Fed. 713, 66 C. C. A. 543. It thus appears that the English Court of Appeal, without referring in any way to American decisions, has reached a conclusion identical with the rule which has always been in force in this country.

WILLS—EFFECT OF REVOCATION UPON FAILURE OF THE PURPOSE FOR WHICH IT WAS MADE.—Under a marriage settlement for her life, with remainder as she should appoint, testatrix made an appointment for the benefit of her daughter, M., then later by codicil expressly revoked the same, and made a new appointment whereby the fund was to be held in trust for the benefit of the said M., for life, then to such other daughters of testatrix as should survive M. The new appointment in the codicil was void under the rule against perpetuities, and M. now seeks to determine whether the codicil, being void as an appointment, was also void as a revocation of the earlier appointment. *Held,* that the intention of the testatrix was not to revoke the prior appointment in any case, but only for the purpose of carrying out the altered appointment, and since the purpose of the revocation had failed, the revocation also failed. *In re Bernard's Settlement,* [1916] 1 Ch. 552, 85 L. J. Ch. 414.

Where a will or codicil is duly executed by a competent person, but its provisions cannot be given effect, as when void as a perpetuity, (*Altrock* v. *Vanderburgh,* 25 N. Y. Supp. 851), or a bequest to a charity which fails be-